

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	
XETHANOL BIOFUELS, LLC	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ- 63
Blairstown, Iowa	

TO: Jim Stewart, General Manager Xethanol Biofuels, LLC 2154 78 th Street Blairstown, Iowa 52209	Corporation Service Company, Registered Agent Xethanol Biofuels, LLC 729 INS Exchange Building Des Moines, Iowa 50309
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I. SUMMARY

This administrative consent order is entered into between Xethanol Biofuels, LLC (Xethanol) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving air quality monitoring and reporting violations at Xethanol's Blairstown facility. The parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Diane Brockshus
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-4801

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Xethanol is an ethanol production facility located in Blainstown, Iowa. The facility was formerly owned by Sunrise Energy Cooperative (Sunrise). On July 12, 1996, DNR issued numerous construction permits to Sunrise. The following construction permits contained New Source Performance Standards (NSPS) Subpart VV testing and reporting requirements: 96-A-775, 96-A-777, 96-A-778, 96-A-779, 96-A-780, 96-A-781, and 96-A-782. Subpart VV requires monthly leak detection monitoring and submittal of semi-annual reports. In October 2002, Sunrise was acquired by 78th Street Ethanol, and in March 2003 78th Street Ethanol ceased operations at the facility. In October 2004, 78th Street Ethanol was acquired by Xethanol. The construction permits issued to Sunrise remained in place at the time the facility was acquired by Xethanol.

2. Xethanol resumed operation of the facility in July 2005. On January 31, 2006, the Subpart VV semi-annual report for the testing period of July 2005 – December 2005 was due. Xethanol failed to submit the report to the DNR. On July 31, 2006, the Subpart VV semi-annual report for the testing period of January 2006 – June 2006 was due. Xethanol failed to submit the report to the DNR. On January 31, 2007, the Subpart VV semi-annual report for the testing period of July 2006 – December 2006 was due. Xethanol failed to submit the report to the DNR.

3. On February 23, 2007, Bryan Bunton, DNR environmental specialist, contacted Xethanol personnel and inquired as to the facility's Subpart VV testing and reporting status. Mr. Bunton requested the facility submit records or proof of any previous leak detection work within 30 days. The facility did not submit any of the requested information.

4. On April 13, 2007, DNR issued a Notice of Violation letter to Xethanol for failing to conduct the required Subpart VV monitoring and for failing to submit the required Subpart VV reports. The facility was required to submit a compliance plan by May 18, 2007 detailing how Xethanol would achieve compliance with Subpart VV.

5. On May 17, 2007, Xethanol submitted a compliance plan stating the facility would conduct the first round of Subpart VV monitoring by the end of June 2007. On July 20, 2007, Xethanol submitted its first Subpart VV semi-annual report for the testing period of January 2007 – June 2007. The report indicated that four leaks were detected.

IV. CONCLUSIONS OF LAW

1. 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions which shall be specified in writing, and that such conditions may include compliance monitoring requirements. Xethanol failed to demonstrate compliance with the

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Subpart VV requirements listed in several of the facility's construction permits. Condition 13 of the construction permits listed in Section III, Paragraph 1 of this administrative consent order states that "the standards, recordkeeping and reporting requirements as mandated by 40 CFR 60.480 through 60.489 (Subpart VV) shall be followed." Xethanol failed to conduct the required Subpart VV monitoring and failed to submit the required Subpart VV reports for a period of two years from July 2005 through July 2007. The above-mentioned facts demonstrate noncompliance with the construction permit conditions.

2. The NSPS Subpart VV -- *Standards of Performance for Equipment Leaks of Volatile Organic Compounds (VOC) in the Synthetic Organic Chemicals Manufacturing Industry* as specified in 40 Code of Federal Register (CFR) Part 60, Section 60.480 through 60.489 was adopted by reference in 567 IAC 23.1(2)(nn). Subpart VV requires monthly leak detection monitoring for pumps, valves, and compressors in VOC service, and the submittal of semi-annual reports based on the leak detection data collected. VOC testing is required to begin when the operation of the facility commences, with the initial report due 180 days after start-up. The facility is then required to submit semi-annual reports for the testing periods. Xethanol failed to conduct the required Subpart VV monitoring and reporting requirements for a period of two years from July 2005 through July 2007. The above-mentioned facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Xethanol agrees to the following:

1. Xethanol shall pay a penalty in the amount of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty.

The administrative penalty assessed by this administrative consent order is \$10,000.00. The administrative penalty is determined as follows:

Economic Benefit - Xethanol received a significant economic benefit by failing to conduct the leak detection tests and submit the semi-annual reports. Xethanol was able to

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delay the cost of training personnel in the proper testing procedure as well as the cost to purchase the testing equipment. Additionally, Xethanol was able to avoid the total cost of completing the testing for almost two years. This includes consultant fees, the personnel costs to complete the tests or hiring an outside firm to complete the tests, and any repairs that may have been necessary as a result of the tests. For these reasons, \$7,000.00 is being assessed for this factor.

Gravity of the Violation One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Xethanol's failure to conduct the required Subpart VV monitoring and its failure to submit the required Subpart VV reports prevented the DNR and the public from determining the facility's compliance status. Since the monitoring was not conducted for almost 2 years, it is difficult to determine the amount of potential harm to the environment. However, the first round of tests indicated that four leaks were discovered. Repeated noncompliance with the Subpart VV requirements threatens the integrity of the Air Quality program. For these reasons, \$1,500.00 is being assessed for this factor.

Culpability Xethanol has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The construction permits issued to the facility contained the Subpart VV requirements, and Xethanol should have been aware of the requirements. For these reasons, \$1,500.00 is assessed for this factor.

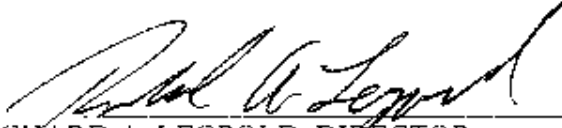
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Xethanol. For that reason, Xethanol waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE


Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring an enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV Conclusions of Law" of the administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 18 day of
March, 2008



XETHANOL BIOFUELS, LLC

Dated this 18th day of
March, 2008

Barb Stock (#06-04-001); Kelli Book; Diane Brockshus; DNR Field Office 1; EPA; VII.B.2.a